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1955

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October 11

SEP 22 1998

CONCORD, N.H.

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

Dear Mr. Barry:

You have inquired by your letter of October 10, 1955 as to the application of RSA 571:2 (Revised Laws, chapter 441, section 2) respecting the father of illegitimate children who has never been held chargeable under bastardy proceedings pursuant to RSA 168 (Revised Laws, chapter 128). Please be advised that it was held in the case of State v. Eyrton, 79 N.H. 39 that the father of an illegitimate child is not liable to indictment for failure to provide for the support of the child if he is under no duty to furnish support under an order of court rendered in a proceeding for bastardy.

The Court in that case by way of dictum suggests that prosecution might be sustained if the father had a legal duty by contract to support the child. Assuming that the Court today would follow and apply this dictum it does not appear from your letter that there is such a duty because of the existence of a contract in the case of Joseph Page.

You state that Mr. Page signed some type of agreement to the effect that he would contribute \$20.00 per week for the support of his three children. This was apparently obtained after pending prosecution for non-support of the children was dismissed because of the above-outlined non-liability. Unless additional facts are present so that my understanding is incorrect this agreement appears to be without consideration and would not afford the basis for establishing a legal duty, by way of contract, on the part of Mr. Page, to furnish support for the children. The type of consideration readily imaginable for this kind of situation, the dismissal of bastardy proceedings, is not present and it is my opinion that the mother, town, county and department are without a remedy to secure support for the children from the putative father who has not been found chargeable.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD/T